

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-512-M-KS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	UNITED STATES' MOTION TO FILE
)	FIRST AMENDED COMPLAINT
v.)	
)	[Rule 15(a)(2); L.R. 7.1; L.R. 15.1]
MELTON E. "VAL" VALENTINE, JR.,)	
MELTON E. "SKIP" VALENTINE, III,)	
and INDIANTOWN FARM LLC,)	
)	
Defendants.)	
<hr style="width: 45%; margin-left: 0;"/>		

Plaintiff United States of America hereby moves to file the First Amended Complaint attached as Exhibit 1 against the Defendants Melton E. "Val" Valentine, Jr., Melton E. "Skip" Valentine, III, and Indiantown Farm, LLC (collectively, "Valentine Defendants") pursuant to Federal Rule of Civil Procedure 15 and Local Rule 15.1. *See* Fed. R. Civ. P. 15(a)(2) (authorizing a party to amend its pleading with leave of court); L.R. 15.1 (providing for the filing and docketing of amended pleadings).

In support of this motion to amend, the United States provides the following:

1. In December 2022, the United States filed this Clean Water Act enforcement action against the Valentine Defendants. [D.E. 1]. The United States' Complaint alleges that the Valentine Defendants violated the Clean Water Act by discharging pollutants, including soil, sand, and rock, in jurisdictional wetlands at their 1,700-acre property in Jamesville, North Carolina without the required federal permit. [D.E. 1, ¶¶ 1, 38-49 (U.S. Complaint citing 33 U.S.C.

- §§ 1311, 1319, 1344)]. As provided by the Clean Water Act, the United States seeks to enjoin the Valentine Defendants to restore the impacted wetlands at their own expense and to impose appropriate civil penalties for their violations.
2. After the filing of the Complaint, the Valentine Defendants obtained several extensions to respond to the Complaint while the parties explored the possibility of settlement. Those efforts did not result in a settlement. On July 5, 2023, the Court established July 31, 2023 as the deadline for the Valentine Defendants' response to the United States' original Complaint. [D.E. 19]. In that order, the Court stated that "no further extensions of the deadline will be allowed" absent extenuating circumstances. *Id.*
 3. The Valentine Defendants did not comply with the July 2023 deadline and instead sought to stay the entire case indefinitely. No ruling on the stay motion has been made as of this filing. The Valentine Defendants have not filed an answer to the United States' original Complaint.
 4. In an effort to avoid further delays in the progress of the matter, the United States contacted the Valentine Defendants' counsel on September 29, 2023 to inquire whether they would consent to the filing of an updated pleading. We provided a draft copy of the First Amended Complaint and a redline version at that time. Undersigned counsel conferred and exchanged further communications with defense counsel regarding their willingness to consent to the amendment on multiple occasions between October 2 and October 10, 2023. Ultimately, counsel for the Valentine Defendants was unable to consent to the amendment, necessitating this motion by the United States.

5. The United States’ proposed amendment adds a claim under the Rivers and Harbors Act of 1899. *See* 33 U.S.C. §§ 403, 406. As explained in the proposed amended complaint (Exhibit 1), the Valentine Defendants violated the Rivers and Harbors Act by placing an unauthorized dock and pilings in Devils Gut, a traditional navigable water that falls within the jurisdiction of the United States Army Corps of Engineers. The United States discovered this violation during a visit to the Valentines’ property in May 2023. Other than the addition of the Rivers and Harbors Act claim, the United States’ proposed amendment makes minor modifications to clarify a few of the allegations in the original complaint regarding the Clean Water Act claim and updates the Complaint with allegations related to Devils Gut camp/dock project. The substance of the allegations in the original Complaint regarding the unauthorized roads/dikes largely remains the same. A redline showing the proposed changes is attached as Exhibit 2 to this motion in accordance with Local Rule 15.1(a).
6. The Federal Rules of Civil Procedure provide that “[t]he court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see also Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (noting the “liberal rule” favoring amendments). Here, the United States’ amended complaint meets Rule 15’s standards and should be allowed.
7. As noted above, this action remains in the initial stages and the Valentine Defendants have not filed an answer to the United States’ original Complaint. The Court has not requested a Rule 26 report from the parties, held a scheduling conference, or set any case management deadlines. No discovery has occurred.

8. Moreover, the United States' proposed amendment is made in good faith, is well-founded on the facts and governing federal law, and would result in no unfair prejudice to the Valentine Defendants, particularly given the early stage of this matter. The Valentine Defendants have had ample time to investigate the facts and develop their defenses over the past ten months since the filing of this action. Allowing the United States' proposed amendment will facilitate the efficient progress of this action.

Based on the foregoing, and as elaborated in the supporting memorandum of law, the United States respectfully requests that the Court grant this motion and direct the First Amended Complaint to be docketed in accordance with Local Rule 15.1(b). The Valentine Defendants' response to the United States' amended complaint should be provided thereafter within 14 days in accordance with Rule 15(a)(3).

Dated: October 10, 2023

Respectfully submitted,

TODD KIM
Assistant Attorney General
United States Department of Justice

MICHAEL F. EASLEY, JR.
United States Attorney
Eastern District of North Carolina

/s/ Michael C. Augustini
MICHAEL C. AUGUSTINI
DC Bar No. 452526
ALEX J. HARDEE
NC Bar No. 56321
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044-7611
Tel: (202) 616-6519 (Augustini)
Tel: (202) 514-2398 (Hardee)
Fax: (202) 514-8865
michael.augustini@usdoj.gov
alex.hardee@usdoj.gov

ANDREW KASPER
NC Bar No. 44515
Assistant United States Attorney
Eastern District of North Carolina
150 Fayetteville Street
Suite 2100
Raleigh, NC 27601
Phone: (919) 856-4530
Fax: (919) 856-4487
andrew.kasper@usdoj.gov

Counsel for Plaintiff United States of America

OF COUNSEL:

Carl E. Pruitt, Jr., Esq.
Deputy District Counsel
U.S. Army Corps of Engineers, Wilmington District
69 Darlington Avenue
Wilmington, NC 28403-1343

CERTIFICATE OF SERVICE

I certify that, on October 10, 2023, a copy of the foregoing Motion to File First Amended Complaint and attachments was filed with the Court electronically. Notice of this filing will be sent to all parties by operation of the Court's Electronic Case Filing System, and via electronic mail, including counsel for Defendants Melton E. "Val" Valentine, Jr., Melton E. "Skip" Valentine, III, and Indiantown Farm, LLC. Parties may access the filing through the Electronic Case Filing System.

Executed on this the 10th day of October 2023.

/s/ Michael C. Augustini
Senior Trial Counsel
United States Department of Justice